IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.589 of 2007and
Cr.MP(M) No.590 of 2007.

Date of decision: 3.9.2007.

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1. Cr.MP(M) No.589 of 2007

Manjeet Kaur ……. Petitioner

Vs.

State of H.P. …. Respondent.

2.Cr.MP(M) No.590 of 2007

Rajinder Singh ……Petitioner

Vs.

State of H.P. ……Respondent

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the Petitioner : Mr. D.S. Dalee, Advocate.

For the Respondent M.L. Chauhan, Additional Advocate General.

(In both cases)

Kuldip Singh, Judge. **(Oral)**

This order shall dispose of Cr.MP(M) No.589 of 2007 and Cr.MP(M) No.590 of 2007 as both have arisen out of FIR No.44 dated 20.1.2007 registered at Police Station Sadar Mandi under Sections 20, 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short Act).

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

The brief facts are that on 20.1.2007 HC Anand Kishor, HC Shyam Lal, HC Chaman Lal and LC Suman Devi at about 3 p.m. were patrolling in maruti van. An information was received that a man and woman in black car No.PB-13 R-1880 were proceedings toward Pandoh and carrying charas. On this nakka party was constituted. In the meantime at about 3.10 p.m. Indica car No.PB-13 R-1880 came which was stopped by the police party. On asking the man on the wheels, he disclosed his name Rajinder Singh and on the front adjoining seat a woman was sitting who disclosed her name Ms, Manjeet Kaur. Consent form was filled in and thereafter search was made. On search of Manjeet Kaur from her person charas weighing 2.700 Kg was recovered . Two samples of 25 grams each were taken separately. A case under the Act was registered against both the accused. The search and sealing formalities were completed. The statements of the witnesses were recorded. The accused were arrested. After completion of investigation challan was put up in the Court on 7.3.2007. The case is pending before learned Fast Track Court, Mandi . The applicants earlier applied for bail on 30.4.2007 and 29.5.2007 and those applications were rejected.

Heard and perused the record.

The learned counsel for the applicants has submitted that no recovery has been made from accused Rajinder Singh. He has submitted that as far as the accused Manjeet Kaur is concerned, allegations against her that charas weighing 2.700 Kg. was allegedly recovered from her person. He has submitted that keeping in view law lay down by this Court in ***Dharam pal vs. State of H.P. [Latest Himachal Law Judgments (2007) 827]*** even if it is accepted at this stage that

Manjeet Kaur was carrying 2.700 Kg. stuff, in that case also entire stuff was not charas but charas quantity in the alleged recovered stuff was only 27.06 W W , as per State Forensic Science Laboratory, Junga Examination report in the present case. He has submitted that charas allegedly recovered from Manjeet Kaur is less than commercial quantity and therefore rigour of section 37 will not apply .

The learned additional Advocate General has opposed the bail application and has submitted that charge against both the accused has already been framed in the case. Both the accused are involved in the case. Rajinder Singh is equally responsible and answerable to the recovery which was made from of Ms. Manjeet Kaur who was travelling with him in the car. The recovered quantity of charas is quite large and in the facts and circumstances of the case, both the applicants are not entitled bail at this stage.

The prosecution case at best is that charas weighing 2.700 Kg. was recovered from Ms. Manjeet Kaur who was sitting on front seat of the car which was being driven by applicant Rajinder Singh. As per State Forensic Science Laboratory, Junga Examination report, the resin content in the stuff is 27.06 W W. The learned counsel for the applicants has submitted that W W in the report stands for percentage of weight in weight. Therefore, in view of Dharam Pal case (supra), the quantity of charas in the recovered stuff is less than commercial quantity and rigour of Section 37 is not applicable. The applicants are in custody since 20.1.2007. The challan has already been filed in the Court. It has been submitted by learned Addl. Advocate General that applicants are the residents of outside State of

Himachal Pradesh and in case they are released on bail they may misuse the liberty of bail.

In the facts and circumstances of the case, both the applications are allowed. The applicants are ordered to be released on bail in FIR No.44 of 2007 dated 20.1.2007 under Sections 20, 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 subject to furnishing personal bond in the sum of Rs.50,000/- with two local sureties each of the like amount by the each applicant to the satisfaction of learned trial Court subject to the conditions that applicants shall not temper with the prosecution evidence and shall not delay the trial.

The observations made in this order are for disposal of this application and these shall not be treated an expression of opinion on the merits of the case.

Copy Dasti on usual terms.

(Kuldip Singh)
Judge

September 3, 2007
(sks)